

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:03-PLR-121895-98

Date:

June 7, 1999

Legend

Taxpayer =

Accountant =

Year 1 =

Year 2 =

Dear

This letter is in response to the letter of December 1, 1998 submitted on behalf of Taxpayer requesting an extension of time to elect to treat suspended investment interest expense as amounts allocable to a passive activity pursuant to Notice 89-36, 1989-1 C.B. 677, and section 1005(c)(11) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Pub. L. No. 100-647, 102 Stat. 3342.

Taxpayer was an investor in an activity that produced investment interest expense in tax years prior to 1987. Some of this interest expense was disallowed for the Taxpayer's 1986 tax year and was carried forward to 1987. For tax years after 1986, the activity was characterized as a passive activity under section 469 of the Internal Revenue Code.

It has been represented that Taxpayer relied exclusively on Accountant for the preparation of tax returns from Year 1 until Year 2. Accountant has represented that he was unaware of the election under section 1005(c)(11) of TAMRA and Notice 89-36 until preparation of Taxpayer's return for Year 2. Consequently the election was not timely filed.

Section 1005(c)(11) of TAMRA provides that if (1) any amount was disallowed as a deduction under section 163(d) of the 1954 Code (as in effect on the day before the date of the enactment of the 1986 Act); (2) such amount would (but for the making of an election under section 1005(c)(11)) be treated as investment interest paid or accrued by the taxpayer in the taxpayer's first taxable year beginning after December 31, 1986; and (3) the taxpayer makes an election at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe, then to the extent such amount is attributable to an activity subject to the limitations of section 469 of the Code, such amount shall not be treated as investment interest but shall be treated as a deduction allocable to such activity for such first taxable year.

By Notice 89-36, the Service provided guidance as to the time and manner of making the election under section 1005(c)(11) of TAMRA. Notice 89-36 provides that the election must be made by filing an amended return on or before the later of (1) the due date (taking into account any extensions of time to file obtained by the taxpayer) for filing the income tax return of the taxpayer for the taxpayer's first taxable year beginning after December 31, 1987, or (2) August 15, 1989.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under section 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

In the present situation, the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. Consequently, Taxpayer is granted an extension of time for making the election until 60 days following the date of this letter. The election should be made in a written statement filed with the District Director having jurisdiction over Taxpayer's returns. A copy of this letter should be attached to the written statement filed with the District Director. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed or implied as to the federal tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed as to whether any amounts disallowed as a deduction under section 163(d) of the 1954 Code were in fact available for the election provided for by Notice 89-36.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely yours,

Paul F. Kugler  
Assistant Chief Counsel  
(Passthroughs and Special  
Industries)

Enclosures (2):  
Copy of this letter  
Copy for 6110 purposes

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cc: